IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO.686 OF 2004
IN
MISC.PETITON NO.14 OF 2004
IN
PETITION NO.690 OF 2000

WITH

NOTICE OF MOTION NO.687 OF 2004
IN
MISC.PETITON NO.13 OF 2004
IN
PETITION NO.466 OF 2003

Smt.Bhavnaben J.Ashar Anr. .. Petitioners

Vs.

Chirayu Jamnadas Bhatia & Ors. .. Respondents

Mr.C.S.Kapadia with Ms.S.Rukhsana i/b M/s.V.Mistry & Co. for the petitioners

Mr.M.K.Mesari for the respondents

CORAM : S.U.KAMDAR, J

DATED : 22ND JULY 2005

P.C.:

1. The present notice of motions have been taken out by the petitioners claiming to be the legal heirs of one Haridas V.Bhatia. It is the

case of the petitioners that the letter of administration has been obtained by the respondents of the estate of the said deceased Haridas V.Bhatia without giving any citation to them and thus they are not given any opportunity to contest the will. Some of the material facts of the present case are briefly enumerated are as under:

2. Haridas V.Bhatia died in 1945. Prior to his death he had two wives. One Smt.Hiraben H.Bhatia and the other is Smt.Prabhavati H.Bhatia. The said Hiraben died in or about 1940 leaving behind her daughter Maniben H.Bhatia who has also expired on 24.4.59 and the present petitioners are two daughters of the said Maniben H.Bhatia i.e. they are claiming to be the grand daughters of Haridas Bhatia. Respondents on the other hand are claiming to be the legal heirs of the second wife Smt.Prabhavati H.Bhatia. The said Prabhavati H.Bhatia died on 7.10.02 and her son Jamnadas Haridas Bhatia predeceased on 8.8.95. The respondent no.1 to 3 are the sons of the said deceased Jamnadas H.Bhatia and the respondent no.4 is the wife of the said Jamnadas H.Bhatia.

3. The essential dispute between the parties is whether the petitioners in the present case being children of the first wife will be legal heirs of the said deceased Haridas V.Bhatia and as such entitled to the share in respect of the said property and thus, also entitled to the citation before Letter of Administration is issued. The learned counsel for the petitioners contends that Haridas V.Bhatia died prior to Hindu Succession Act, 1956 coming into operation and according to him on the death of Haridas Bhatia only limited interest is vested in favour of Prabhavati H.Bhatia and on her death i.e. 7.10.2002 succession of the estate will be open and will be governed according to the provisions of Hindu Succession Act, 1956. He has also relied upon the Judgment of the Apex Court in the case of Daya Singh and anr. vs.Dhan Kaur, reported in AIR 194 SC 665.

4. On the other hand, the learned counsel for the respondents contends that under the provision of s.15 of the Hindu succession Act, 1956 general rule of s.4 would apply and petitioners will not be

entitled to any interest whatsoever in the estate of the said deceased Haridas Bhatia and therefore they are not the legal heirs of the said Haridas V.Bhatia and thus they have rightly not been served with the citation and the letter of administration has been obtained. My attention is also drawn by the learned counsel for the respondent to an order passed by the learned single Judge in Notice of Motion No.1611 of 2004 being order dt.7.4.05 in which the learned single Judge has prima facie not accepted the contention of the petitioners herein and the said motion has been dismissed. The learned counsel for the respondents contends that in view of the order passed by the learned single Judge in Notice of Motion No.1611 the present notice of motion ought to be dismissed. I am unable to accept the aforesaid contention because in my opinion, the issue whether the petitioners are entitled to share by virtue of provisions Hindu Succession Act, 1956 coming into operation or not is the issue which is required to be determined finally at the hearing of the main petitions 690 of 2000 and 466 of 2003. Obviously, if the petitioners are not entitled to said succession

then the petitioners will fail and the petition for revocation of grant will be consequently dismissed. It is not possible to hold at the interim stage that the petitioners are not entitled to contest the said issue or to hold at prima facie stage that the case of the petitioner is untenable and that no interim relief can be granted. In my opinion, the issue which are raised by the petitioners in the present petition are required to be considered at the final hearing of the petition and it cannot be answered one way or the other at this stage. In any event, prima facie, I do not find that there is no merit in the aforesaid contention.

5. Primafacie, I am of the opinion that the issues in the present case are required to be considered in depth at the hearing and the final disposal of the main petition and in the meantime the properties are required to be protected in the present case. At the ad interim stage the learned single Judge has passed a limited order of injunction. I am of the opinion that the said order dt.11.3.04 should be confirmed and the property should be protected till the final

disposal of the petition. Thus, the order dt.11.3.04 in both the motions are confirmed and the motions are disposed of accordingly.